

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUNDANCE, INC. and
MERLOT TARPAULIN AND
SIDEKIT MANUFACTURING CO., INC.,

Plaintiffs,

vs.

Case No. 02-73543

DEMONTE FABRICATING LTD. and
QUICK DRAW TARPAULIN SYSTEMS, INC.,

HON. AVERN COHN

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO RECALL JURY
AND
DIRECTING PLAINTIFFS TO FILE A RESPONSE TO DEFENDANTS' MOTION FOR
RECONSIDERATION WITHIN TEN (10) DAYS

I.

This is a patent case tried to a jury. The plaintiffs, Sundance, Inc., Merlot Tarpaulin and Sidekit Manufacturing Co., Inc. (collectively, Sundance) sued defendants DeMonte Fabricating LTD and Quick Draw Tarpaulin Systems, Inc. (collectively, DeMonte) for infringement of U.S. Patent No. 5,026,109 (the '109 patent). In April 2006, a jury that found the '109 patent invalid and infringed. Sundance filed a motion for judgment as a matter of law to set aside the jury's finding of invalidity. The Court granted the motion. See Memorandum and Order Granting Plaintiffs' motion for Judgment as a Matter of Law or for a New Trial, filed September 20, 2006. DeMonte filed a motion for judgment as a matter of law to set aside the jury's finding of infringement. The Court denied the motion. See Memorandum and Order Denying

Defendants' Motion for Judgment as a Matter of Law Regarding Infringement, filed April 25, 2007. A trial on damages before a new jury is set for Monday, May 14, 2007.

II.

Before the Court is DeMonte's Motion to Recall the Jury in which it asks the Court to recall the jury from the liability phase for the damages phase or in the alternative allow DeMonte to immediately appeal the Court's validity ruling. Sundance has responded. The motion is DENIED. There are no grounds for recalling the jury in the liability phase or allowing DeMonte to appeal the validity ruling at this time.

Also before the Court is DeMonte's Renewed Motion for Reconsideration of the Court's Memorandum and Order Granting Plaintiffs' Motion for Judgment as a Matter of Law or For a New Trial, arguing that the Supreme Court's decision in KSR v. Teleflex, Inc., 550 U.S. ___ (2007) impacts the Court's validity finding. Sundance shall file response to the motion within ten (10) days.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: May 8, 2007

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, May 8, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160